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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ERIC ARLEN MOOTZ,

10 NO. C13-718-JCC-JPD

11 Plaintiff,

12 v.

13 CAROLYN W. COLVIN, Acting
14 Commissioner of Social Security,

15 REPORT AND
16 RECOMMENDATION

17 Defendant.

18 Plaintiff Eric Arlen Mootz appeals the final decision of the Commissioner of the Social
19 Security Administration (“Commissioner”) that denied his application for Supplemental
20 Security Income (“SSI”) under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-83f,
21 after a hearing before an administrative law judge (“ALJ”). For the reasons set forth below,
22 the Court recommends that the Commissioner’s decision be AFFIRMED.

23 I. FACTS AND PROCEDURAL HISTORY

24 At the time of the administrative hearing, Plaintiff was a 42-year-old man with a high
25 school diploma and two years of college education. Administrative Record (“AR”) at 66. His
26 past work experience includes employment as a computer programmer. AR at 189. Plaintiff
27 was last gainfully employed in January 2000. AR at 188.

On March 19, 2010, Plaintiff filed a claim for SSI payments. AR at 155-58. Plaintiff asserts that he is disabled due to mental illness and blood clots. AR at 187.

The Commissioner denied Plaintiff's claim initially and on reconsideration. AR at 92-99, 107-12. Plaintiff requested a hearing, which took place on November 15, 2011. AR at 50-80. On December 13, 2011, the ALJ issued a decision finding Plaintiff not disabled and denied benefits based on his finding that Plaintiff could perform a specific job existing in significant numbers in the national economy. AR at 33-44. After reviewing additional evidence, the Appeals Council denied Plaintiff's request for review. AR at 1-6. On April 23, 2013, Plaintiff timely filed the present action challenging the Commissioner's decision. Dkt. 1, 3.

II. JURISDICTION

Jurisdiction to review the Commissioner's decision exists pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3).

III. STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits when the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). "Substantial evidence" is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is

1 susceptible to more than one rational interpretation, it is the Commissioner's conclusion that
 2 must be upheld. *Id.*

3 The Court may direct an award of benefits where "the record has been fully developed
 4 and further administrative proceedings would serve no useful purpose." *McCartey v.*
 5 *Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002) (citing *Smolen v. Chater*, 80 F.3d 1273, 1292
 6 (9th Cir. 1996)). The Court may find that this occurs when:

7 (1) the ALJ has failed to provide legally sufficient reasons for rejecting the
 8 claimant's evidence; (2) there are no outstanding issues that must be resolved
 9 before a determination of disability can be made; and (3) it is clear from the
 record that the ALJ would be required to find the claimant disabled if he
 considered the claimant's evidence.

10 *Id.* at 1076-77; *see also Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000) (noting that
 11 erroneously rejected evidence may be credited when all three elements are met).

12 IV. EVALUATING DISABILITY

13 As the claimant, Mr. Mootz bears the burden of proving that he is disabled within the
 14 meaning of the Social Security Act (the "Act"). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th
 15 Cir. 1999) (internal citations omitted). The Act defines disability as the "inability to engage in
 16 any substantial gainful activity" due to a physical or mental impairment which has lasted, or is
 17 expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§
 18 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if his impairments are
 19 of such severity that he is unable to do his previous work, and cannot, considering his age,
 20 education, and work experience, engage in any other substantial gainful activity existing in the
 21 national economy. 42 U.S.C. §§ 423(d)(2)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098-
 22 99 (9th Cir. 1999).

23 The Commissioner has established a five step sequential evaluation process for
 24 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§

1 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At
2 step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at
3 any step in the sequence, the inquiry ends without the need to consider subsequent steps. Step
4 one asks whether the claimant is presently engaged in “substantial gainful activity.” 20 C.F.R.
5 §§ 404.1520(b), 416.920(b).¹ If he is, disability benefits are denied. If he is not, the
6 Commissioner proceeds to step two. At step two, the claimant must establish that he has one
7 or more medically severe impairments, or combination of impairments, that limit his physical
8 or mental ability to do basic work activities. If the claimant does not have such impairments,
9 he is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe
10 impairment, the Commissioner moves to step three to determine whether the impairment meets
11 or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d),
12 416.920(d). A claimant whose impairment meets or equals one of the listings for the required
13 twelve-month duration requirement is disabled. *Id.*

14 When the claimant’s impairment neither meets nor equals one of the impairments listed
15 in the regulations, the Commissioner must proceed to step four and evaluate the claimant’s
16 residual functional capacity (“RFC”). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the
17 Commissioner evaluates the physical and mental demands of the claimant’s past relevant work
18 to determine whether he can still perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If
19 the claimant is able to perform his past relevant work, he is not disabled; if the opposite is true,
20 then the burden shifts to the Commissioner at step five to show that the claimant can perform
21 other work that exists in significant numbers in the national economy, taking into consideration

22 _____
23 ¹ Substantial gainful activity is work activity that is both substantial, i.e., involves
24 significant physical and/or mental activities, and gainful, i.e., performed for profit. 20 C.F.R. § 404.1572.

1 the claimant's RFC, age, education, and work experience. 20 C.F.R. §§ 404.1520(g),
 2 416.920(g); *Tackett*, 180 F.3d at 1099, 1100. If the Commissioner finds the claimant is unable
 3 to perform other work, then the claimant is found disabled and benefits may be awarded.

4 V. DECISION BELOW

5 On December 13, 2011, the ALJ found:

- 6 1. The claimant has not engaged in substantial gainful activity since
 March 19, 2010, the alleged onset date.
- 7 2. The claimant's depressive disorder (not otherwise specified) and
 anxiety disorder (not otherwise specified) are severe.
- 8 3. The claimant does not have an impairment or combination of
 impairments that meets or medically equals the severity of one of the
 listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1.
- 9 4. The claimant has the RFC to perform a full range of work at all
 exertional levels but with the following nonexertional limitations: the
 claimant is capable of working in an environment where he can avoid
 concentrated exposure to hazards and perform simple, routine,
 repetitive one- to two-step tasks, with no public contact and few, if
 any, changes in the work setting.
- 10 5. The claimant is unable to perform any past relevant work.
- 11 6. The claimant was born on XXXXX, 1969, and was 41 years old,
 which is defined as a younger individual age 18-49, on the date the
 alleged disability onset date.²
- 12 7. The claimant has at least a high school education and is able to
 communicate in English.
- 13 8. Transferability of job skills is not material to the determination of
 disability because using the Medical-Vocational Rules as a framework
 supports a finding that the claimant is "not disabled," whether or not
 the claimant has transferable job skills.
- 14 9. Considering the claimant's age, education, work experience, and
 residual functional capacity, there are jobs that exist in significant
 numbers in the national economy that the claimant can perform.

24 ² The actual date is deleted in accordance with Local Rule CR 5.2, W.D. Washington.

10. The claimant has not been under a disability, as defined in the Social Security Act, since March 19, 2010, through the date of this decision.

AR at 36-44.

VI. ISSUES ON APPEAL

The principal issues on appeal are:

1. Whether the ALJ erred in finding that Plaintiff's mental health impairments did not meet a listing;
 2. Whether the ALJ erred in discounting Plaintiff's credibility; and
 3. Whether the ALJ erred in discounting opinions from David Sandvik, M.D.; William R. Wilkinson, Ed.D.; Donna Smith, Psy.D.; and Evelyn Moser, LMHP.³

Dkt. 16 at 2.

VII. DISCUSSION

A. The ALJ Did Not Err in Finding that Plaintiff's Mental Health Impairments Do Not Meet a Listing.

Plaintiff argues that the ALJ erred at step three in findings that his mental health impairments did not meet Listing 12.04, 12.06, or 12.09. *See* AR at 37-38. The ALJ explained why he found that Plaintiff had only mild restriction in activities of daily living; moderate difficulties in social functioning and concentration, persistence, and pace; and no episodes of decompensation of extended duration. *Id.* Based on those findings, the ALJ concluded that Plaintiff did not satisfy the “paragraph B” criteria, and thus did not have a listing-level

³ This assignment of error encompasses Plaintiff's challenge to the ALJ's RFC assessment, because the only errors in the RFC assessment that Plaintiff identifies are based on limitations indicated by Drs. Sandvik, Wilkinson, and Smith, and Ms. Moser. Dkt. 16 at 16-17. Thus, Plaintiff essentially reiterates his arguments regarding the medical opinions when arguing that the ALJ failed to account for those opinions when assessing his RFC. But because, as described *infra*, the ALJ provided valid, sufficient reasons to discount the challenged medical opinions, the ALJ did not need to account for those medical opinions when assessing Plaintiff's RFC. See *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175-76 (9th Cir. 2008).

1 combination of impairments. AR at 38. According to Plaintiff, the evidence cited by the ALJ
2 does not directly support his conclusions. Dkt. 16 at 3-7.

3 Plaintiff fails to establish error in the ALJ's analysis, however, because he merely
4 argues that the ALJ's rationale is "not self evident" (Dkt. 16 at 3). But the relevant question is
5 whether the ALJ's analysis is based on reasonable inferences drawn from the record, and the
6 Court finds that it is. As to activities of daily living, the ALJ reasoned that because Plaintiff is
7 able to handle his personal care needs, does not require reminders to take care of hygiene or to
8 take medication, and can complete grocery shopping with help and complete simple chores,
9 Plaintiff is only mildly restricted in activities of daily living. AR at 37. Plaintiff cites no
10 evidence showing that the ALJ overlooked evidence that he is more restricted than the ALJ
11 found, nor does he establish or even argue that the ALJ's interpretation of the evidence was
12 unreasonable. *See Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999)
13 ("Where the evidence is susceptible to more than one rational interpretation, it is the ALJ's
14 conclusion that must be upheld.").

15 As to social functioning, the ALJ found that Plaintiff had moderate difficulties, in light
16 of his ability to attend church once a week and NA meetings multiple times a week, and his
17 ability to interact with his girlfriend, brother, and others. AR at 37. The ALJ acknowledged
18 that Plaintiff reported a tendency to isolate and avoid interacting with people, especially in
19 large groups. *Id.* The ALJ also found that Plaintiff had moderate difficulties as to
20 concentration, persistence, and pace, given that he can handle his personal hygiene, maintain
21 his medication regimen, use public transportation, attend NA meetings, and maintain some
22 hobbies. *Id.* The ALJ also acknowledged that the Plaintiff reported difficulty maintaining
23 attention due to anxiety and depression, that he often needs to read something multiple times to
24 understand it, and that his medications slow down his psychomotor skills. *Id.*

1 Plaintiff argues that the ALJ did not explain how he reached his conclusion that the
2 evidence showed “moderate” difficulties in these areas, as opposed to more severe difficulties,
3 but the purportedly contrary evidence cited by Plaintiff does not actually reveal error in the
4 ALJ’s analysis. Dkt. 16 at 6-7. Plaintiff cites medical opinions regarding various aspects of
5 his functioning, but the ALJ provided valid, sufficient reasons (discussed *infra*) to discount
6 those opinions (AR at 41-42), and thus did not need to credit them at step three. The ALJ
7 described the evidence that supported his conclusions regarding the “paragraph B” criteria, and
8 Plaintiff has not shown that his interpretation of that evidence was unreasonable. Furthermore,
9 the only opinion explicitly addressing the “paragraph B” criteria found that Plaintiff did not
10 satisfy them. *See* AR at 658. Accordingly, Plaintiff has not established that the ALJ erred at
11 step three.

12 B. The ALJ Did Not Err in Discounting Plaintiff’s Credibility.

13 The ALJ provided a number of reasons to discount Plaintiff’s credibility, namely: (1)
14 inconsistent daily activities, (2) evidence of improvement with treatment, and (3) inconsistent
15 medical evidence. AR at 39-40. Plaintiff acknowledges that the ALJ summarizes various
16 pieces of evidence, but argues that the ALJ nonetheless “does not state how these facts support
17 a finding that the Plaintiff is less than credible.” Dkt. 16 at 15. Noting that there is no
18 evidence of malingering, Plaintiff argues that the ALJ erred in citing evidence that does not
19 actually undermine his subjective testimony. *Id.*

20 1. *Legal Standards on Assessing Credibility*

21 As noted above, credibility determinations are within the province of the ALJ’s
22 responsibilities, and will not be disturbed, unless they are not supported by substantial
23 evidence. A determination of whether to accept a claimant’s subjective symptom testimony
24 requires a two-step analysis. 20 C.F.R. §§ 404.1529, 416.929; *Smolen*, 80 F.3d at 1281; Social

1 Security Ruling (“SSR”) 96-7p. First, the ALJ must determine whether there is a medically
 2 determinable impairment that reasonably could be expected to cause the claimant’s symptoms.
 3 20 C.F.R. §§ 404.1529(b), 416.929(b); *Smolen*, 80 F.3d at 1281-82; SSR 96-7p. Once a
 4 claimant produces medical evidence of an underlying impairment, the ALJ may not discredit
 5 the claimant’s testimony as to the severity of symptoms solely because they are unsupported by
 6 objective medical evidence. *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en banc);
 7 *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1988). Absent affirmative evidence showing
 8 that the claimant is malingering, the ALJ must provide “clear and convincing” reasons for
 9 rejecting the claimant’s testimony. *Smolen*, 80 F.3d at 1284; *Reddick*, 157 F.3d at 722.

10 When evaluating a claimant’s credibility, the ALJ must specifically identify what
 11 testimony is not credible and what evidence undermines the claimant’s complaints; general
 12 findings are insufficient.⁴ *Smolen*, 80 F.3d at 1284; *Reddick*, 157 F.3d at 722. The ALJ may
 13 consider “ordinary techniques of credibility evaluation” including a reputation for truthfulness,
 14 inconsistencies in testimony or between testimony and conduct, daily activities, work record,
 15 and testimony from physicians and third parties concerning the nature, severity, and effect of
 16 the symptoms of which he complains. *Smolen*, 80 F.3d at 1284; *see also Light v. Social Sec.*
 17 *Admin.*, 119 F.3d 789, 792 (9th Cir. 1997).

18 2. *The ALJ Cited Evidence Undermining Plaintiff’s Complaints*

19 The ALJ’s decision first summarizes Plaintiff’s subjective testimony and then discusses
 20 the evidence that the ALJ found to be inconsistent with his testimony. AR at 38-40.
 21 Specifically, the ALJ summarized Plaintiff’s testimony regarding the effect of his depression

22 ⁴ Plaintiff argues that the ALJ failed to follow the correct legal standard for assessing
 23 his credibility because he failed to address the factors set out in SSR 96-7p. Dkt. 16 at 15. As
 24 noted by the Commissioner, however, explicit discussion of all of the SSR 96-7p factors is not
 required. Dkt. 19 at 9. SSR 96-7p requires that an ALJ provide specific reasons to discount a
 claimant’s credibility, and the ALJ did so here. *See* AR at 39-40.

1 and anxiety, and then identified evidence showing that Plaintiff was not as restricted as he
 2 claimed to be: he was able to cope with his anxiety enough to take information technology
 3 classes in April 2011 (due to improvement with medication, meditation, and breathing
 4 exercises), and his counselor noted many normal findings on a mental status examination. AR
 5 at 39-40 (citing AR 676, 763-64, 768, 773). The ALJ also noted that Plaintiff was capable of
 6 complying with his appointment schedule, and had proactively sought treatment for his mental
 7 and physical symptoms. AR at 40. Finally, the ALJ found that Plaintiff was able to live with
 8 his girlfriend and others in a clean and sober house, and attend recovery group meetings, which
 9 undermines his testimony regarding an inability to interact with other people. *Id.* The
 10 evidence cited by the ALJ reasonably supports the ALJ's conclusion that Plaintiff is able to
 11 function at a higher level than alleged. Plaintiff's implied alternate interpretation of the
 12 evidence does not establish error in the ALJ's adverse credibility determination.

13 C. The ALJ Did Not Err in Discounting Medical Opinions.

14 Plaintiff assigns error to the ALJ's assessment of four opinions: he contends that the
 15 ALJ erred in discounting these opinions, and instead crediting the State agency opinions. The
 16 Court will address each disputed opinion in turn.

17 1. *Standards on Assessing Medical Opinions*

18 As a matter of law, more weight is given to a treating physician's opinion than to that
 19 of a non-treating physician because a treating physician "is employed to cure and has a greater
 20 opportunity to know and observe the patient as an individual." *Magallanes*, 881 F.2d at 751;
 21 *see also Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). A treating physician's opinion,
 22 however, is not necessarily conclusive as to either a physical condition or the ultimate issue of
 23 disability, and can be rejected, whether or not that opinion is contradicted. *Magallanes*, 881
 24 F.2d at 751. If an ALJ rejects the opinion of a treating or examining physician, the ALJ must

1 give clear and convincing reasons for doing so if the opinion is not contradicted by other
2 evidence, and specific and legitimate reasons if it is. *Reddick*, 157 F.3d at 725. “This can be
3 done by setting out a detailed and thorough summary of the facts and conflicting clinical
4 evidence, stating his interpretation thereof, and making findings.” *Id.* (citing *Magallanes*, 881
5 F.2d at 751). The ALJ must do more than merely state his/her conclusions. “He must set forth
6 his own interpretations and explain why they, rather than the doctors’, are correct.” *Id.* (citing
7 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)). Such conclusions must at all times
8 be supported by substantial evidence. *Reddick*, 157 F.3d at 725.

9 The opinions of examining physicians are to be given more weight than non-examining
10 physicians. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Like treating physicians, the
11 uncontradicted opinions of examining physicians may not be rejected without clear and
12 convincing evidence. *Id.* An ALJ may reject the controverted opinions of an examining
13 physician only by providing specific and legitimate reasons that are supported by the record.
14 *Bayliss*, 427 F.3d at 1216.

15 In order to determine whether a claimant is disabled, an ALJ may also consider lay-
16 witness sources, such as testimony by nurse practitioners, physicians’ assistants, and counselors,
17 as well as “non-medical” sources, such as spouses, parents, siblings, and friends. *See* 20 C.F.R.
18 § 404.1513(d). Such testimony regarding a claimant’s symptoms or how an impairment affects
19 his or her ability to work is competent evidence, and cannot be disregarded without comment.
20 *Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993). This is particularly true for such non-
21 acceptable medical sources as nurses and medical assistants. *See* SSR 06-03p (noting that
22 because such persons “have increasingly assumed a greater percentage of the treatment and
23 evaluation functions previously handled primarily by physicians and psychologists,” their
24 opinions “should be evaluated on key issues such as impairment severity and functional effects,

1 along with the other relevant evidence in the file.”). If an ALJ chooses to discount testimony of
 2 a lay witness, he must provide “reasons that are germane to each witness,” and may not simply
 3 categorically discredit the testimony. *Dodrill*, 12 F.3d at 919.

4 2. *Dr. Sandvik’s Opinion*

5 Dr. Sandvik evaluated Plaintiff in June 2010, just after Plaintiff had taken some anxiety
 6 medication to avoid being nervous. AR at 622-25. Dr. Sandvik concluded:

7 . . . [Plaintiff’s] formal mental status testing was encumbered because he
 8 appeared somewhat sedated. He noted himself that he took an antianxiety
 9 medication because he thought it would help him perform better. He was slow
 10 in responding to questions at times, and had difficulty focusing and his focus
 11 was fairly sporadic through the evaluation. He has some difficulty with social
 12 interaction and he may have had this from his youth when he was often alone
 13 and his mother was away in psychiatric care. One wonders about the degree
 14 that he could perform work activities consistently through a normal workday,
 15 owing to the fact that he seems not to tolerate stress well, and does not have
 16 particularly good interpersonal skills. He could perhaps work part time in
 17 situations of fairly low stress. Approaches to him psychiatrically should include
 18 supportive counseling[,] helping him problem solve, medications for depression
 19 and anxiety, continued monitoring of his sobriety, and medication to help him
 20 sleep. He appears able to manage any funds granted him himself at this time.

21 AR at 625. The ALJ assigned “little weight” to Dr. Sandvik’s conclusions, finding them
 22 inconsistent with the Global Assessment of Functioning (“GAF”) score of 65 that Dr. Sandvik
 23 assigned. AR at 41. The ALJ also noted that Dr. Sandvik performed limited objective testing,
 24 which was “encumbered” by his medication side effects, and thus he relied on Plaintiff’s non-
 credible self-report. *Id.* Lastly, the ALJ stated that Dr. Sandvik’s opinion did not address
 whether adjusting Plaintiff’s medication would alleviate the side effects observed during the
 evaluation. *Id.*

21 Plaintiff argues that the ALJ erred in finding Dr. Sandvik’s GAF score to be
 22 inconsistent with his conclusions, because Dr. Sandvik did not find any “extreme” limitations
 23 or symptoms, and thus reasonably found Plaintiff to have only mild to moderate symptoms.
 24

1 Dkt. 16 at 9. But Plaintiff misses the ALJ's point: Dr. Sandvik opined that Plaintiff had only
2 mild to moderate symptoms, with only intermittent difficulty in social/occupational
3 functioning, and can often "function fairly well," and yet also opined that he was unable to
4 work full-time. AR at 624-25. The ALJ reasonably construed these aspects of Dr. Sandvik's
5 opinion to be internally inconsistent and discounted the opinion accordingly. *See Bayliss*, 427
6 F.3d at 1216 (rejecting physician's opinion due to discrepancy or contradiction between
7 opinion and the physician's own notes or observations is "a permissible determination within
8 the ALJ's province").

9 Neither did the ALJ err in finding that the effect of Plaintiff's medication rendered Dr.
10 Sandvik's testing less reliable, because Dr. Sandvik himself noted that his testing was
11 "encumber[ed]" by Plaintiff's use of anxiety medication. AR at 625. Despite Plaintiff's
12 slowed responses, he was nonetheless able to interpret abstractions and his thought process was
13 coherent and relevant, although his ability to subtract serial 7s and recall items after a delay
14 was somewhat impaired. AR at 623. The "mental status exam" portion of Dr. Sandvik's
15 opinion also includes a record of Plaintiff's self-reported symptoms, including a history of
16 anger problems and his description of how he copes when upset. AR at 623. In light of Dr.
17 Sandvik's inclusion of that self-report within his mental status examination findings, the ALJ
18 did not err in finding that Dr. Sandvik relied on Plaintiff's self-report. Particularly because Dr.
19 Sandvik was apparently unable to separate out the effects of Plaintiff's medication from his
20 underlying symptoms, the ALJ did not err in discounting Dr. Sandvik's compromised test
21 findings.⁵ Because the ALJ provided specific and legitimate reasons to discount Dr. Sandvik's
22 opinion, he did not err in discounting it.

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⁵ Plaintiff argues that Dr. Sandvik may have considered whether Plaintiff's symptoms
were due to the medication or to his underlying condition, but "may not have considered it

1 3. *Dr. Wilkinson's Opinion*

2 Dr. Wilkinson examined Plaintiff in October 2010, and did not review any records
 3 before rendering an opinion regarding his functioning. AR at 704-16. He opined that Plaintiff
 4 had severe limitations in his ability to relate appropriately to co-workers and supervisors,
 5 respond appropriately to and tolerate the pressures and expectations of a normal work setting,
 6 and maintain appropriate behavior in a work setting. AR at 707. Dr. Wilkinson also assigned
 7 a GAF score of 29, which he indicated was based on Plaintiff's self-report as well as his
 8 interview behavior. AR at 706.

9 The ALJ discounted Dr. Wilkinson's opinion on the grounds that he performed "little
 10 objective testing and relied heavily on the claimant's self-report of symptoms[,"] because his
 11 GAF score was inconsistent with his own findings regarding Plaintiff's moderate limitations in
 12 cognitive functioning, and because his opinions regarding Plaintiff's social functioning were
 13 inconsistent with the medical evidence and Plaintiff's own self-report. AR at 41-42.

14 As to the ALJ's first reason, Dr. Wilkinson did in fact cite many self-reported
 15 symptoms as the basis for his opinions, and this is a valid reason to discount his opinion. *See*
 16 AR at 707; *Bray v. Comm'r of Social Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) ("As
 17 the ALJ determined that Bray's description of her limitations was not entirely credible, it is
 18 reasonable to discount a physician's prescription that was based on those less than credible
 19 statements."). As to the ALJ's second reason, a GAF score of 29 is indeed a more severe
 20 rating than Dr. Wilkinson's findings would suggest, because Dr. Wilkinson found Plaintiff
 21 capable of completing most of his activities of daily living, found Plaintiff's cognitive

22
 23 worthy of note." Dkt. 16 at 9. But even if that is the case, Dr. Sandvik himself indicated that
 24 he was unable to fully test Plaintiff's capabilities due to his medication side effects, which
 lends support to the ALJ's interpretation of Dr. Sandvik's test results as compromised. AR at
 623, 625.

1 limitations to be only moderate, and found that Plaintiff was successfully managing his
2 sobriety by attending recovery group meetings and living in clean and sober housing.

3 *Compare AR at 707-08 with Diagnostic and Statistical Manual of Mental Disorders 34* (4th ed.
4 2000) (GAF of 21 to 30 describes behavior “considerably influenced by delusions or
5 hallucinations or serious impairment in communication or judgment” or “inability to function
6 in almost all areas”).

7 As to the ALJ’s third reason — Dr. Wilkinson’s opinion regarding social limitations is
8 inconsistent with medical evidence and Plaintiff’s self-reported activities — Plaintiff argues
9 that the ALJ erred in finding Dr. Wilkinson’s opinion to be inconsistent with the medical
10 evidence “as a whole,” because such a finding does not indicate specifically which evidence is
11 inconsistent. Dkt. 16 at 14. But when the ALJ’s decision as a whole is considered, the ALJ
12 cited medical evidence (AR at 41) that was inconsistent with Dr. Wilkinson’s opinion: Dr.
13 Sandvik found that Plaintiff’s difficulty in social functioning occurred only intermittently, and
14 did not prevent him from maintaining “meaningful interpersonal relationships[.]” AR at 624-
15 25. Dr. Sandvik’s opinion is therefore inconsistent with Dr. Wilkinson’s opinion that
16 Plaintiff’s social functioning is severely limited, as is Plaintiff’s self-reported ability to live
17 with his girlfriend and others in clean and sober housing, and to attend recovery group
18 meetings multiple times a week. *See AR at 708.* Inconsistency with the medical record and a
19 claimant’s activities are valid reasons to discount a medical opinion. *See Tommasetti v. Astrue,*
20 533 F.3d 1035, 1041 (9th Cir. 2008) (not improper to reject an opinion presenting
21 inconsistencies between the opinion and the medical record); *Rollins v. Massanari*, 261 F.3d
22 853, 856 (9th Cir. 2001) (affirming an ALJ’s rejection of a treating physician’s opinion that
23 was inconsistent with the claimant’s level of activity). Accordingly, the ALJ provided specific
24 and legitimate reasons to discount Dr. Wilkinson’s opinion.

1 4. *Dr. Smith's Opinion*

2 Dr. Smith evaluated Plaintiff in October 2009, while he was in a “highly structured
3 inpatient chemical dependency treatment program.” AR at 719. She opined that Plaintiff had
4 several marked limitations, in his ability to exercise judgment and make decisions, relate
5 appropriately to co-workers and supervisors, and respond appropriately to and tolerate the
6 pressures and expectations of a normal work setting. AR at 720. She rated Plaintiff’s GAF at
7 50, and indicated that she found his symptoms to be in the “severe” range. AR at 719.

8 The ALJ gave “little weight” to Dr. Smith’s opinion because her GAF score was
9 inconsistent with her more specific opinions, indicating moderate or moderate-to-marked
10 limitations (rather than “severe”). AR at 42. He also noted that Dr. Smith evaluated Plaintiff
11 during a time of incarceration, which may have exacerbated his anxiety and stress levels. *Id.*

12 Plaintiff argues that the ALJ’s first “reason” does not really explain why Dr. Smith’s
13 opinion is entitled to less weight: he characterizes the ALJ’s decision as merely restating Dr.
14 Smith’s opinion. Dkt. 16 at 13. But Plaintiff overlooks the ALJ’s emphasis on the discrepancy
15 between Dr. Smith’s explanation of her GAF score (indicating “severe” symptoms causing
16 “major problems in his daily functioning”) and her opinions regarding Plaintiff’s functioning
17 (none of which indicate “severe” limitations). AR at 719-20. Internal inconsistencies are a
18 valid reason to discount a medical opinion. *See Bayliss*, 427 F.3d at 1216 (9th Cir. 2005).

19 Furthermore, Plaintiff’s argument regarding the ALJ’s second reason to discount Dr.
20 Smith’s opinion merely urges the Court to interpret the evidence of Plaintiff’s circumstances at
21 the time of Dr. Smith’s evaluation in an alternate manner, but does not establish that the ALJ’s
22 inference was unreasonable. *See* Dkt. 16 at 13 (“It would be *as reasonable* to theorize that
23 once released into an unstructured environment with unpredictable demands, stressors, and the
24 need to find shelter and food, an individual’s mental health conditions would worsen.”

1 (emphasis added)). Accordingly, Plaintiff has not identified an error in the ALJ's assessment
 2 of Dr. Smith's opinion.

3 5. *Ms. Moser's Opinions*

4 Plaintiff's mental health counselor, Ms. Moser, provided two opinions regarding his
 5 functioning, in August and October 2011. AR at 729-33, 915-19. The ALJ discounted Ms.
 6 Moser's August 2011 opinion, finding Plaintiff severely limited due to anxiety, to be
 7 contradicted by other medical opinions and also inconsistent with her own mental status
 8 examination findings. AR at 42.⁶ He also found both of Ms. Moser's opinions to be based
 9 largely on Plaintiff's self-reported symptoms, and he questioned whether Ms. Moser was
 10 qualified to evaluate Plaintiff's ability to work. *Id.*

11 Ms. Moser's opinions regarding the severity of Plaintiff's functional limitations are
 12 indeed more extreme than other opinions of record. *Compare* AR at 731 with AR at 707, 720.
 13 Inconsistency with other medical evidence is a valid reason to discount a medical opinion. *See*
 14 *Tommasetti*, 533 F.3d at 1041. Furthermore, Ms. Moser supported her functional opinions in
 15 August 2011 (AR at 731) with descriptions of Plaintiff's symptoms, rather than her own
 16 observations, and most of her October 2011 questionnaire answers were unexplained or
 17 unsupported (AR at 917-918). The Court agrees with Plaintiff (Dkt. 16 at 12) that the ALJ
 18 merely speculated as to whether Ms. Moser was qualified to assess Plaintiff's ability to work,
 19 but because he provided two other germane reasons to discount her opinion, Plaintiff has failed
 20 to establish prejudicial error.

21

22

23 6 The ALJ cites a document that has been expunged from the record as containing Ms.
 24 Moser's mental status examination findings. AR at 42 (citing AR at 734). Thus, the Court
 cannot review whether this reason supports the ALJ's conclusion.

VIII. CONCLUSION

For the foregoing reasons, the Court recommends that this case be AFFIRMED. A proposed order accompanies this Report and Recommendation.

Objections to this Report and Recommendation, if any, should be filed with the Clerk and served upon all parties to this suit within **fourteen (14)** days of the date on which this Report and Recommendation is signed. Failure to file objections within the specified time may affect your right to appeal. Objections should be noted for consideration on the District Judge's motion calendar for the third Friday after they are filed. Responses to objections may be filed within **fourteen (14)** days after service of objections. If no timely objections are filed, the matter will be ready for consideration by the District Judge on **April 11, 2014**.

DATED this 27th day of March, 2014.

James P. Donohue
JAMES P. DONOHUE
United States Magistrate Judge